

EXHIBIT 4

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Page

1 Exhibits 1 - 5 Vol. 1, Pgs. 1 - 53

2 UNITED STATES DISTRICT COURT

3 DISTRICT OF MASSACHUSETTS

4 Civil Action No. 04-10233-RCL

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6 JONATHAN BEIJAR

7 Plaintiff

8 vs.

9 STANLEY FASTENING SYSTEMS, L.P.

10 Defendant

11 -----

12

13 DEPOSITION of WAYNE PINARD

14 Monday, May 17, 2004, 10:10 a.m.

15 Lang, Xifaras & Bullard

16 115 Orchard Street

17 New Bedford, Massachusetts

18

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22 Reporter: David A. Arsenault, RPR

23 Farmer Arsenault Brock LLC, Boston, MA

24 (617) 728-4404

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1 years.
 2 Q. Do you know where he lived when he was
 3 working for you?
 4 A. In New Bedford, I believe.
 5 Q. When was he last employed by Care Free
 6 Homes?
 7 A. I think he was with me probably another
 8 five or six months after that incident.
 9 Q. Now, you said that you witnessed the
 10 accident to Mr. Beijar?
 11 A. Yes, I did.
 12 Q. What did you see?
 13 A. What I saw, we were cutting rafters,
 14 leaning them up against the house. We had a
 15 staging plank up about 7 feet off the ground. It
 16 was the Bostitch nailer on the plank. We were
 17 nailing rafters up at the time. And when we were
 18 standing the rafters up, they hit the plank. They
 19 were bumping into the plank and the gun was
 20 starting to fall off, hanging off the plank a
 21 little bit. That's when I asked Jon Beijar to fix
 22 the gun, push it on the plank before it fell.
 23 Q. What happened?
 24 A. He apparently couldn't reach it. He

Page

1 after they had been cut?
 2 A. We cut them.
 3 Q. And he moved them?
 4 A. He stands them up and leans them over
 5 against the wall.
 6 Q. I think your testimony was that they
 7 bumped the staging?
 8 A. Well, Jon Beijar was the only one
 9 carrying rafters. As he's carrying the rafters, he
 10 hit the staging plank with the rafter. That caused
 11 the gun to walk off the plank a little bit.
 12 Q. For purpose of clarity, you'll hear me
 13 use the term nailer or tool, as opposed to gun,
 14 only because the tool is a pneumatic tool that
 15 operates off of air, correct?
 16 A. Correct.
 17 Q. I'll use that to mean the pneumatic
 18 nailer that was involved in this accident.
 19 A. Yes.
 20 Q. I probably won't use the word "gun."
 21 A. We call them guns. It is just habit.
 22 Q. It is an acronym in the industry.
 23 A. Yes, a pneumatic gun.
 24 Q. I'm going to show you what we marked as

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1 grabbed the line with his left hand and he pulled
 2 it.
 3 Q. He pulled what?
 4 A. The air line, it was attached to the gun.
 5 It was hanging down. He pulled the air line off,
 6 and he pulled the gun off and it fell. As it fell,
 7 he caught it with his right hand and pulled the
 8 trigger and caught it like a football and pulled it
 9 into his chest, and that's when I heard it fire.
 10 Q. What time day was it when the incident
 11 occurred?
 12 A. It happened in the morning somewhere
 13 around 9:00 or 10:00.
 14 Q. Where were you at that time?
 15 A. I was cutting rafters with the saw.
 16 Q. Was anybody working with you cutting
 17 rafters?
 18 A. Dave Santos. He was at the other end.
 19 We cut the rafters at the same time, one on each
 20 end.
 21 Q. What was Mr. Beijar's job?
 22 A. He was just a laborer. He was a laborer.
 23 He was carrying the rafters, standing them up.
 24 Q. So Mr. Beijar was picking up the rafters

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1 Exhibit 2 to Mr. Beijar's deposition, which was
 2 taken about two weeks ago. Can you take a look at
 3 that.
 4 A. That's the gun.
 5 Q. Can you identify them?
 6 A. A Bostitch nailer N 80 stick nailer. I
 7 guess that's the model.
 8 Q. Is that the nailer that was involved in
 9 Mr. Beijar's accident?
 10 A. Yes, I was. It has a smooth top. It is
 11 the only gun I had with that type of top.
 12 Q. When you say a smooth top, are you
 13 talking the back of the tool?
 14 A. The head up here, it doesn't have a screw
 15 or anything. Most of them have a little air thing
 16 you can spin around. This one doesn't have it.
 17 For some reason this one doesn't have it.
 18 Q. Did you ever operate this tool?
 19 A. Yes, I did.
 20 Q. Did you operate it prior to Mr. Beijar's
 21 accident?
 22 A. Yes, I did.
 23 Q. And in what form? How did you use it?
 24 A. Any nailing, whatever framing material I

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1 did you get a replacement tool?
 2 A. Yes.
 3 Q. What kind of tool?
 4 A. The same nailer, a newer model.
 5 Q. Did you put that into service?
 6 A. Yes.
 7 Q. Are you using that today?
 8 A. Yes.
 9 Q. What did you notice about the trigger
 10 when you got the gun?
 11 A. The trigger was different. It would only
 12 shoot one nail at a time.
 13 Q. One nail a time?
 14 A. A sequential trigger.
 15 Q. What's the difference between a
 16 sequential trigger and a contact trigger?
 17 A. Sequential you have to press the tip and
 18 then pull the trigger for the nail to shoot.
 19 Q. And contact is what?
 20 A. The contact you can hold the trigger and
 21 depress the tip and it will shoot as many times as
 22 you hold the trigger.
 23 Q. Did you keep the sequential trigger on
 24 the replacement tool?

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1 A. On the new nailer, no.
 2 Q. Why not?
 3 A. Because they are just not easy to use
 4 that way. It is much more productive -- we shoot a
 5 thousand nails a day. You just have -- you can't
 6 shoot one at a time.
 7 Q. So what did you do?
 8 A. I changed the trigger.
 9 Q. You changed the sequential back to
 10 contact?
 11 A. Yes, I put it back to contact.
 12 Q. Did the tool come with a little package
 13 with a replacement trigger?
 14 A. Yes. It came in a box.
 15 Q. How long did it take you to replace the
 16 trigger?
 17 A. Two minutes.
 18 Q. When the tool marked as Exhibit 2 in
 19 Mr. Bejar's deposition was used, how old was it?
 20 A. A week old. We just bought it.
 21 Q. Almost right out of the box?
 22 A. Yeah.
 23 Q. Did you take it out of the box?
 24 A. I'm sure I did.

Page

1 Q. Did that box have a package like this one
 2 that had --
 3 A. Yes, it did.
 4 Q. -- that had a sequential trigger in it?
 5 A. Yes.
 6 Q. If Care Free Homes wanted to, they could
 7 have changed the contact trigger into a sequential?
 8 A. Yes, we could.
 9 Q. And you opted not to do that?
 10 A. Right.
 11 Q. Why was that?
 12 A. Because none of the guns ever came that
 13 way. They always come with a contact trigger.
 14 That's how we learned to use them.
 15 Q. Does the contact trigger work better for
 16 your application?
 17 A. Yes.
 18 Q. I'd like to go back to Mr. Bejar's
 19 accident. What time did you arrive on the job site
 20 that day?
 21 A. We were getting in Osterville at the job
 22 site at 7:00 o'clock in the morning.
 23 Q. So you had been there three to four
 24 hours, something like that?

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1 A. We were working long days. It was an
 2 hour drive.
 3 Q. From where?
 4 A. Fairhaven. An hour there, an hour home,
 5 ten hours on the job site. In fact, that island,
 6 you could only work ten hours.
 7 Q. Are there drawings that show what you
 8 were building?
 9 A. There were blueprints on the job site.
 10 Q. Does Care Free Homes maintain those
 11 blueprints now?
 12 A. Yes.
 13 Q. I understand you were building a single-
 14 family home?
 15 A. Yes, but it was very large. It was 6,000
 16 square feet.
 17 Q. Do you remember the address?
 18 A. No. I know it was in Oyster Harbor in
 19 Osterville.
 20 (Discussion off the record.)
 21 (Marked, Exhibit 2.)
 22 Q. I'm going to show you what we marked as
 23 Exhibit 2. That was faxed up to me on Friday in
 24 response to a subpoena to Mr. Edwards. Can you

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1 up with his left hand and pulled on the air line,
2 pulling the gun off the plank.

3 Q. Was there anything in his right hand at
4 the time?

5 A. No.

6 Q. And then you said he reached up with his
7 left hand and pulled on the air hose, I take it?

8 A. He pulled on the air line, because that
9 was hanging down.

10 Q. With his left hand he pulled the tool
11 towards him?

12 A. He pulled it towards him, which caused it
13 to fall off the plank.

14 Q. Now, when it fell, after Mr. Beijar
15 pulled on the air hose to cause it to fall towards
16 him, could you see how the tool was positioned? In
17 other words, was it upright like this (indicating)
18 or upside down so that the head was on the bottom?

19 MS. DAVIS: Objection.

20 Q. Describe for me how you saw the position
21 of the tool.

22 A. Well, it kind of fell off sideways. It
23 was laying sideways on the plank. It was sideways.
24 The tail went first because that's what the air

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1 estimate transpired between the time he pulled on
2 the air hose with his left hand and the time you
3 heard it discharge, you say he reached with his
4 right hand?

5 A. As the gun fell off the plank, he caught
6 it pretty much with his right hand as it was
7 falling towards him.

8 Q. And as he grabbed it with his right hand
9 as it was falling, he pulled it into his body?

10 A. Yes.

11 Q. Where was his right hand positioned on
12 the tool?

13 A. It appeared that he grabbed it by the
14 handle.

15 Q. Here (indicating)?

16 A. By the rubber handle. The gun was facing
17 towards him. It looked like he grabbed it
18 backwards with the gun facing backwards.

19 Q. Like this (indicating)?

20 A. With his thumb, actually, with his thumb
21 on the trigger.

22 Q. Like this (indicating)?

23 A. Yes.

24 Q. So the back of his hand was behind the

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1 line is attached to.

2 Q. And how much time passed between the time
3 that he pulled on the air line with his left hand
4 and the time you heard it discharge?

5 A. A split second.

6 Q. What was the total distance that the tool
7 had to travel?

8 A. Maybe 4 to 5 feet.

9 Q. How tall is Mr. Beijar?

10 A. I believe about my height, 5-5, 5-6.

11 Q. And it hit him basically right in the
12 chest?

13 A. Yes. It looked like he caught it by the
14 handle with his right hand as it was falling
15 towards him. Then he just pulled it into his chest
16 for some reason, like he was catching a football.
17 I know you have to do two things to shoot. You
18 have to hold the trigger and depress the tip.

19 Q. All the time you used this tool the week
20 before the incident and the two years after you put
21 it back into service, did this tool ever discharge
22 without those two things happening?

23 A. No, it never has.

24 Q. Now, in the split second that you

Page

1 tool --

2 A. Yes, it was.

3 Q. -- as it is upside down?

4 A. Yes.

5 Q. And his right thumb hit the trigger?

6 A. Yes.

7 Q. Could you tell whether or not his thumb
8 hit the trigger before it hit his chest?

9 A. No, I couldn't. He was facing away from
10 me. All I saw him do was grab it in that manner
11 with his right hand.

12 Q. It could have been when he grabbed it
13 with his right hand, his fingers on the outside of
14 the tool, his thumb hit the trigger?

15 A. Yes.

16 Q. His thumb hit the trigger either before
17 the tip hit his chest or after the tip hit his
18 chest. You couldn't tell that.

19 A. I couldn't tell that. He was facing way
20 from me. His back was facing me.

21 Q. Was there anything impeding your view of
22 Mr. Beijar's hand as you described his hand on the
23 handle and his right thumb on the trigger?

24 A. No, I saw his right hand grab the gun,